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OGC Has Reviewed

CFB

13 July 1949

Office of the General Counsel

Audit Branch Memorandum No. 365

LEGAL

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1. Reference is made to your memorandum of 17 June 1949 and Audit Branch Memorandum No. [] attached thereto, which is concerned with the reimbursement of transportation costs to [] in connection with the shipment of a new personal automobile from the factory in Lansing, Michigan to []. You have also attached to your memorandum, General Motors Corporation invoice No. [] recording the sale of one Model 1947-78 Oldsmobile 4 Door Sedan, to [] who stated that this invoice is the only evidence of ownership given to him by General Motors Corporation.

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2. The facts of this case are stated in full in your memorandum and Audit Branch Memorandum No. [] and need not be repeated here.

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3. The issue is clear; did title to the automobile pass to [] at the making of the contract or was it postponed until delivery to the Dispatch Agent, Howard Fyfe. If the former, then [] is entitled to reimbursement for transportation charges in accordance with the rule stated in 10 Comp. Gen. 268. If the latter, then [] would not be entitled to reimbursement since the charges would have been incurred prior to acquisition of title.

4. Determination as to when title passes in transactions of this type is not always simple, as various factors act to affect the determination. Ordinarily it may be stated:

(a) That where goods are specific or identifiable at the time of a contract for sale is entered into, and the goods are in a deliverable state at that time, the presumption is that title was intended to pass at the making of the contract.

(b) That in "f.o.b. contracts" title passes when the goods arrive at the place after the f.o.b; viz, when the goods are delivered to the carrier by the seller, when the f.o.b. point is place of origin.

5. However, the foregoing generalizations are always subject to qualification by a more important principle of law which provides that, unless the parties clearly intend to the contrary, any particular usage or custom of trade in vogue governs the transaction, and the title rests as the usage or custom dictates.

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6. Hence, it is to this principle of law that we must look for the solution in this case. According to conversations which the undersigned has conducted with the representatives of General Motors, Mr. Sheppard, Overseas Export and Mr. Robert Murphy, Associate General Counsel of the Overseas Division; Mr. Houston Lay, Legal Advisor, State Department; Mr. Boyd, Chief, Commissary and Welfare Section, State Department, and Mr. Hopkins, Foreign Service Administrator, State Department, the recognized custom and usage in these transactions is that the sale of the automobile is not wholly executed until the vehicle has been delivered to the dispatch agent in accordance with the delivery instructions appearing in the usual State Department letter to the Foreign Distributors Division, General Motors Corporation. As a matter of incidental information, the shipment of the vehicle is insured for the account of General Motors Corporation rather than that of the individual.

7. Therefore, in the absence of an express intent and understanding to the contrary, we are required to conclude that title to the vehicle concerned did not pass to until it was delivered to the dispatch agent at New York, and the transportation charges involved are the responsibility of the individual and not of the Government. 25X1A9A

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